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LAW AND ORDER

The Story Behind Bill Barr's Unmarked Federal Agents

The motley assortment of police currently occupying Washington, D.C., is a window into the vast, complicated, obscure world of federal law enforcement.

Law enforcement monitor protesters in Washington, D.C. | Tasos Katopodis/Getty Images

By GARRETT M. GRAFF

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Few sights from the nation’s protests in recent days have seemed more dystopian than the appearance of rows of heavily-armed riot police around Washington in drab military-style uniforms with no insignia, identifying emblems or name badges. Many of the apparently federal agents have refused to identify which agency they work for. “Tell us who you are, identify yourselves!” protesters demanded, as they stared down the helmeted, sunglass-wearing mostly white men outside the White House. Eagle-eyed protesters have identified some of them as belonging to Bureau of Prisons’ riot police units from Texas, but others remain a mystery.

The images of such military-style men in America’s capital are disconcerting, in part, because absent identifying signs of actual authority the rows of federal officers appear all-but indistinguishable from the open-carrying, white militia members cosplaying as survivalists who have gathered in other recent protests against pandemic stay-at-home orders. Some protesters have compared the anonymous armed officers to Russia’s “Little Green Men,” the soldiers-dressed-up-as-civilians who invaded and occupied eastern Ukraine. House Speaker Nancy Pelosi sent a letter to President Donald Trump Thursday demanding that federal officers identify themselves and their agency.

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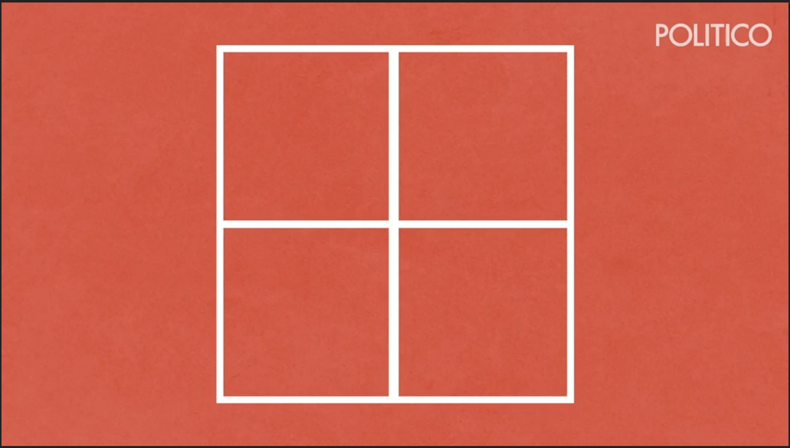
To understand the police forces ringing Trump and the White House it helps to understand the dense and not-entirely-sensical thicket of agencies that make up the nation’s civilian federal law enforcement. With little public attention, notice and amid historically lax oversight, those ranks have surged since 9/11—growing by roughly 2,500 officers annually every year since 2000. To put it another way: Every year since the 2001 terrorist attacks, the federal government has added to its policing ranks a force larger than the entire Bureau of Alcohol, Tobacco, Firearms and Explosives.

Nearly all of these agencies are headquartered in and around the capital, making it easy for Attorney General William Barr to enlist them as part of his vast effort to “flood the zone” in D.C. this week with what amounts to a federal army of occupation, overseen from the FBI Washington area command post in Chinatown. Battalions of agents were mustered in the lobby of Customs and Border Protection’s D.C. headquarters—what in normal times is the path to a food court for federal workers. The Drug Enforcement Administration has been given special powers to enable it to surveil protesters. It is the heaviest show of force in the nation’s capital since the protests and riots of the Vietnam War.

As large as the public show of force on D.C.'s streets has turned out to be—Bloomberg reported Thursday that the force includes nearly 3,000 law enforcement—it still represents only a tiny sliver of the government's armed agents and officers. The government counts up its law enforcement personnel only every eight years, and all told, at last count in 2016, the federal government employed over 132,000 civilian law enforcement officers—only about half of which come from the major "brand name" agencies like the FBI, ATF, Secret Service, DEA and CBP. The Federal Law Enforcement Training Center, which serves as the general academy for federal agencies who don't have their own specialized training facilities, lists around 80 different agencies whose trainees pass through its doors in Georgia, from the IRS' criminal investigators and the Transportation Security Administration's air marshals to the Offices of the Inspector General for the Federal Deposit Insurance Corp. and the Railroad Retirement Board. Don't forget the armed federal officers at the Environmental Protection Agency or the National Oceanic and Atmospheric Administration's Office of Law Enforcement, whose 150 agents investigate conservation crime like the Tunas Convention Act of 1975 (16 USC § 971-971k) and the Northern Pacific Halibut Act of 1982 (16 USC § 773-773k).



In and around D.C., there are more than a score of agency-specific federal police forces, particularly downtown where protests have played out over the past week, nearly every block brings you in contact with a different police force. A morning run around the National Mall and Capitol Hill might see you cross through the jurisdictions of the federal U.S. Capitol Police, the Park Police, the National Gallery of Art police, the Smithsonian Office of Protective Services, the Postal police, Amtrak police, the Bureau of Engraving and Printing police, the Supreme Court police, the Uniformed Division of the Secret Service, the Government Publishing Office police, and the Department of Homeland Security's Federal Protective Service. (Only recently did the Library of Congress police merge with the Capitol Police across the street into one unit.) Run a bit farther and you might encounter the FBI Police or the U.S. Mint police. And that's not even counting the multistate Metro Transit police and the local D.C. Metropolitan Police.

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The public has little understanding or appreciation for the size of some of these agencies, each of which has its own protocols, training, hiring guidelines and responsibilities. On the lighter side, few tourists know, for instance, that the National Gallery of Art—home to some of the world's most famous artwork—has a shooting range for its police tucked away above its soaring central rotunda. On the darker side, the roughly 20,000 federal prison guards known formally as the Bureau of Prisons—whose riot units make up a sizable chunk of the officers imported to D.C. and who represent the single largest component of federal officers in the Justice Department—are concerning to see on the streets in part because they're largely untrained in civilian law enforcement; they normally operate in a controlled environment behind bars with sharply limited civil liberties and use-of-force policies that would never fly in a civilian environment.

There are more gun-carrying agents employed across the federal government by inspectors general—the quasi-independent watchdogs responsible for rooting out fraud and abuse of taxpayer dollars—than there are ATF agents nationwide; the roughly 4,000 inspector general agents nationwide, in fact, is roughly equivalent to the entire size of the DEA. The Department of Veterans Affairs' police department, who guard the nation's veteran hospitals, facilities and cemeteries, is larger than the entire U.S. Marshals Service.

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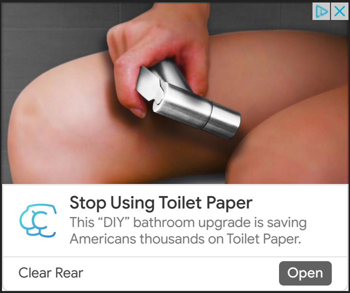

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Beyond those 132,000 federal civilian law enforcement, the U.S. has tens of thousands of military law enforcement officers, including military police units and investigators like the 2,000 agents of the Air Force Office of Special Investigations, the 1,200 agents of the Naval Criminal Investigative Service or the 900 agents of the Army's Criminal Investigation Division. Plus, the 40,000 armed personnel of the U.S. Coast Guard, which has broad law enforcement powers on the nation's rivers, lakes and oceans, but is counted as part of the military.

Then there are the officers who can be spotted across Northern Virginia in white marked patrol vehicles labeled only as "United States Police," the purposefully vague public name given to what is formally known as the CIA's Security Protective Services, who provide security to the CIA and the Office of Director of National Intelligence. They carry weapons, but have limited law enforcement authority. (As one agent told me, only half-joking, "We can't arrest you, but we can kill you.")

The list of crimes these agents and officers collectively enforce is endless, so much that a tongue-in-cheek Twitter feed daily shares the most obscure federal criminal penalties. One of this week's examples: "21 USC §331, 333, 343 & 21 CFR §150.160(b)(2) make it a federal crime to sell jam made from a combination of more than five fruits." It's hard to even say who might even be in charge of enforcing that one—perhaps the agents of the Food and Drug Administration Office of Criminal Investigations? (You should check out its "Most Wanted" page, in case you happen to have seen Cellou Jumaine, wanted for importing 990,000 counterfeit tubes of Colgate toothpaste.)

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The Justice Department can't even come up with a reliable count of the number of federal crimes on the books to enforce; it's somewhere north of 3,000 but federal law is so voluminous and convoluted that no one has really tried to count it since 1982. When I was writing a history of the FBI, the bureau couldn’t even tell me the total number of criminal provisions it was specifically responsible for enforcing.

Many federal agencies have broad law enforcement powers—and can end up enforcing laws that wouldn’t on the surface appear to have much to do with their stated *raison d’etre*. Fun fact: The vast majority of the total arrests made by the Pentagon police, formally known as the Pentagon Force Protection Agency, are for drunk driving. Roughly every two or three days, an intoxicated driver gets lost in the maze of interstate roads around the Defense Department headquarters and takes a wrong turn into one of its parking lots. Such incidents account for as many as four out of five arrests the PFPA make annually.

The rise of so many specialized federal forces—and so many federal law enforcement officers overall—is a relatively recent phenomenon; the FBI was unarmed until the mid-1930s and modern incarnations of the DEA and ATF, for example, were only founded in the 1970s, as part of President Richard Nixon’s law and order push. Historically, it’s not altogether surprising that many of the personnel on D.C.’s streets this week have come from the Border Patrol and the Bureau of Prisons, which have long served as the nation’s “surge” national police force.

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What is surprising is that those two agencies now facing down Black Lives Matter and crowds protesting systemic racism historically have been enlisted by the federal government to *protect* blacks against white protesters. Attorney General Robert F. Kennedy, for instance, deputized officers from the Border Patrol and the Bureau of Prisons to work as U.S. marshals and secure the University of Mississippi in 1962 to protect James Meredith as he enrolled at the school after desegregation. Similarly, the Border Patrol once watched over the Freedom Riders in Alabama and Mississippi in the 1960s.

The biggest—and most troubling—shift in the makeup of federal law enforcement has come in the decades after 9/11, as the number of armed personnel has surged, law enforcement agencies have proliferated and oversight reins have loosened.

Whereas for years, the Department of Justice—which typically has strict oversight regimes and whose leadership is made up primarily of lawyers and prosecutors—accounted for the bulk of federal officers and agents, the post-9/11 growth of DHS has meant that it alone now accounts for nearly half of all sworn federal law enforcement officers. (There's even a special 80-person police force within the Federal Emergency Management Agency, a component of DHS, that guards the president's doomsday bunker at Mount Weather in Berryville, Virginia.) That shift means agencies like Immigration and Customs Enforcement, which after 9/11 replaced the Justice Department's Immigration and Naturalization Service, are now instead led by a department less grounded in the Constitution and whose leadership is more political appointees than career prosecutors.

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More broadly, though, many federal agencies exist with little sustained oversight and continue to struggle with training, recruiting and use of force incidents. The Department of the Interior's Park Police, one of the agencies that has served as the front ranks of the riot security in Lafayette Park, has long been one of the capital region's most troubled law enforcement entities, with complaints and questions about its use of force and even a five-year-long lawsuit over the firing of its police chief after she complained about inadequate staffing. (This week, D.C. Mayor Muriel Bowser, who thanks to the District's odd nonstate status finds herself in the odd position of not controlling the police forces patrolling her own city, blasted the U.S. Park Police and officers from the Secret Service—normally tasked with guarding the White House and foreign embassies in D.C.—for clearing Lafayette Park Monday night to allow Trump to walk across the street for a photo op at St. John's church.) The Federal Protective Service, which oversees security at 9,000 federal buildings across the country, has been reorganized and reshuffled numerous times since 9/11, rarely spending more than a few years in the same box on DHS org charts. And after a hiring surge caused it to lower recruiting standards, CBP has struggled with a decade of rampant crime and corruption in its own ranks—so much so that for most of the past decade, a CBP officer or agent was arrested on average every single day—and its use of force has been widely criticized, even by professional policing organizations. (For a period of time during the Obama administration, the FBI actually declared CBP's corruption was the nation's biggest threat at the border.)

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The Bureau of Prisons has been dogged for years with questions about its management, training and tactics. Amid the protests in

Minneapolis after the killing of George Floyd, a federal inmate also with the last name Floyd (no relation) died this week in an encounter with guards in New York City after being pepper-sprayed in his cell.

Similarly, watchdogs have complained for years about the odd status of the U.S. Marshals Service, a federal agency with roots in the frontier and Wild West that today is in charge of protecting courts and judges, securing federal prisoners and hunting fugitives. The national service is still led across the country by 94 local politically appointed marshals whose posts are handed out as favors, not because of their law enforcement acumen. (The *Boston Globe* once famously surveilled for 10 days the U.S. marshal in Massachusetts, appointed after a stint on the security detail of the state's governor, and found he worked an average of only four hours a day.)

Under the Trump administration, Cabinet officials have come under scrutiny for using the government's law enforcement agents as a sort of Praetorian Guard: EPA Administrator Scott Pruitt resigned amid scandals that included his unprecedented 20-agent round-the-clock security detail, who picked up his dry cleaning and moisturizing lotion; Education Secretary Betsy Devos is protected by a detail of U.S. marshals at a cost of roughly $500,000 a month, and Secretary of State Mike Pompeo is under investigation after a whistleblower complained he was using his Diplomatic Security Service agents to pick up Chinese food or look after his dog. Even obscure Cabinet secretaries who could pass all-but unnoticed on any street in the country now warrant security: Want to be the special-agent-in-charge of guarding the Agriculture secretary? The Executive

Protective Operations Division of the USDA’s Office of Safety, Security and Protection is hiring right now!

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Concerningly, under the Trump administration, many of these agencies have been rudderless—overseen by rotating series of acting officials. More than half of all federal civilian law enforcement right now is being led by temporary acting officials, everything from ICE and CBP to DEA. (That calculation doesn’t even count the thousands of special agents in inspectors general offices that have recently seen an administrationwide purge of the government’s watchdogs.) The Bureau of Prisons was being overseen by an acting director last summer when Jeffrey Epstein managed to commit suicide while supposedly under strict monitoring. The DEA, with its special temporary powers for the protests, is currently led by an acting administrator who has been on the job for just days.

Such leadership voids are not solely a recent problem of the Trump administration: Thanks to pressure from the National Rifle Association on Republican lawmakers about the agency’s firearms investigations, the ATF has had a Senate-confirmed director for a total of only two years since 2003. Last month, the Trump administration withdrew its most recent nominee to be ATF director, Chuck Canterbury, a former police union leader who had been deemed by Republican senators as too liberal on guns. (Yes, you read that right: The former head of the Fraternal Order of Police was considered too liberal for the GOP.)

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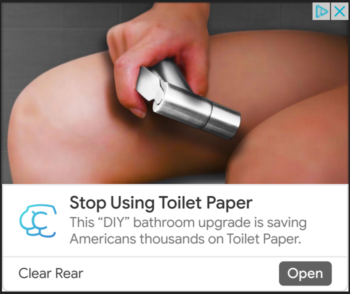

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The proliferation of federal officers across government—and the proliferation of watchdogs watching those government agencies—means that you might one day be woken up by a SWAT team-style raid by the Department of Education or the EPA. And the number keeps growing: Congress was surprised when the Special Inspector General for Afghanistan Reconstruction—known as SIGAR—began procuring its own ammunition, flashing lights and body armor for its special agents. Just like its laws, there are too many federal agents for the government to keep track of.

The Covid-19 pandemic has even spawned what will apparently be the nation's newest federal investigator: The Senate confirmed on Tuesday a special inspector general to oversee the $500 billion pandemic recovery spending. He, presumably, will be recruiting his own agents and equipment soon.

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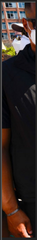

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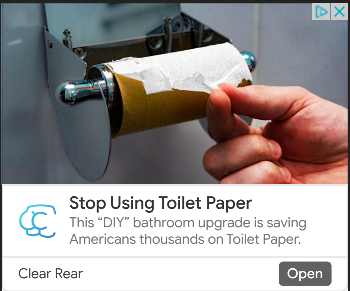

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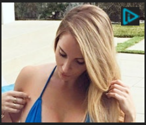

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